IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

FAO.No. 15 of 2007()

AGAINST THE ORDER DATED 16/09/2006 IN IA 2802/2006 IN OS.92/2002 of III ADDL.SUB COURT, KOZHIKODE
.....

APPELLANT/PETITIONER/DEFENDANT

C.K.SUNIL PRAKASH,
AGED 43 YEARS, S/O.BALAN, "JYOTHIS",
MOODADI AMSOM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.R. SUDHISH
ADV. SMT.M.MANJU

RESPONDENT/ RESPONDENT/PLAINTIFF

N.T.SUDHIR, AGED 39 YEARS,
S/O.DIVAKARAN, PROPRIETOR, UMADEVI SAREES,
18/70-A, K.V.COMPLEX, PALAYAM JUNCTION,
KOZHIKODE.

BY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 06/02/2007, ALONG WITH F.A.O NO.17 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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F.A.O.Nos. 15 & 17 OF 2007

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Dated this the 6th February, 2007

J U D G M E N T

Sankaran, J:

On 29.06.2002, an ex parte decree was passed against the petitioner herein, the defendant in O.S.No. 92 of 2002 on the file of the Sub Court, Kozhikode. On 17.03.2006, the petitioner/defendant filed an application to set aside the ex parte decree. An application was also filed to condone the delay of 1327 days in filing the application to set aside the ex parte decree. On 12.06.2006, the court below dismissed those applications for default.

2. I.A.No. 2801 of 2006 and 2802 of 2006 were filed by the petitioner/defendant to restore those applications. The court below dismissed those applications by the impugned order. The respondent had raised a contention that the petitioner herein had made part payment in the

execution proceedings and therefore he is estopped from contending that he was not aware of the ex parte decree passed against him. It was further contended that the application to set aside the ex parte decree is not maintainable on facts.

3. When these appeals came up for admission, a direction was issued to the petitioner to file an affidavit as to when the respondent took steps for execution of the decree and as to the developments in the execution petition. Accordingly, an affidavit dated 23.01.2007 is filed by the petitioner, wherein it is stated that E.P. 11 of 2004 was filed on 06.03.2004 and an amount of Rs. 20,000/- was paid in the execution proceedings. The explanation offered by the petitioner is that his father obtained his signature in some papers and the amount was paid by his father. This contention is liable to be rejected since the petitioner is a party to the proceedings. It is also stated in the affidavit that the execution petition was dismissed in January, 2006.

In view of the fact that there is no merit in the application for setting aside the ex parte decree, no useful purpose would be served by restoring

that application. There is no merit in these appeals and the appeals are accordingly dismissed.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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